
(2022) 03 KL CK 0013
In the High Court Of Kerala
Case No : MACA No. 2888 Of 2015

Reliance General Insurance Co. Ltd

APPELLANT

Vs

Prameela T.G

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Citation : (2022) 03 KL CK 0013

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : George Cherian, K.S. Santhi, K.C.Charles, M.Poly Mathai, Vimal K.Charles, A.T.Renju

Final Decision : Allowed

Judgement

Murali Purushothaman, J

1. The appellant is the insurance company and the claimants are the cross objectors.

M.A.C.A No. 2888 of 2015

2. This is an appeal preferred by the 3rd respondent insurance company against the award dated 06.05.2015 in O.P.(MV) No.315/2013 on the file of the Additional Motor Accidents Claims Tribunal-IV, Ernakulam. The parties in this appeal are referred to as per the status in the claim petition unless otherwise specifically mentioned.

3. The case of the petitioners is that on 19.05.2012, at 4.35 p.m., while the deceased Sivaprasad was standing on the western side of the road at the power house bus stop, Vyttila, the car bearing Reg.No. KL-13K-01, driven by the first respondent in a rash and negligent manner, hit him and he sustained serious injuries and succumbed to the injuries on the way to hospital. The second respondent is the owner of the car and the third respondent is the insurer. An amount of Rs. 32,83,740/- was claimed as compensation for the death of the

deceased in the accident.

4. Before the Tribunal, respondents 1 and 2 were declared ex parte and the 3rd respondent filed written statement admitting that the car was insured with them, but contending that the accident occurred solely because of the negligence on the part of the deceased and that the compensation claimed is excessive.

5. The Tribunal awarded an amount of Rs. 28,71,184/- (Rupees Twenty eight lakhs seventy one thousand one hundred and eighty four only) as total compensation for the death of the deceased with 9% interest per annum from the date of petition till realisation with proportionate costs. The 3rd respondent insurer was directed to satisfy the award.

6. The Tribunal awarded compensation under the following heads:

Head

Amount Claimed

Amount Awarded

Compensation for loss of dependency

23,02,740/-

26,48,184/-

Funeral expenses

10,000/-

10,000/-

Transport to hospital

10,000/-

3,000/-

Loss of estate

10,000/-

25,000/-

Loss of consortium

4,00,000/-

1,00,000/-

Compensation for loss of love and affection

4,00,000/-

75,000/-

Compensation for pain and suffering

1,50,000/-

10,000/-

Total

28,71,184/-

7. The appeal is preferred by the insurer mainly contending that the compensation awarded for loss of dependency is excessive. It is contended that the deceased was aged 53 years and had less than 3 years of service left and the Tribunal went wrong in allowing 15% increase for future prospectus and in applying the multiplier of '11' and ought to have applied split multiplier. The appellant also contends that the compensation for loss of consortium, loss of love and affection and the interest on the amount allowed are excessive.

C.O. No.190/2015

8. The petitioners/the cross objectors contend that the amounts awarded towards loss of consortium, pain and sufferings and transport to and from hospital are inadequate.

9. As regards the cross objection, the learned senior counsel for the Insurance Company raised a preliminary objection contending that since the petitioners have been awarded compensation over and above the amounts claimed in the claim petition, the cross objection is not maintainable.

10. The petitioners had initially claimed an amount of Rs. 27,83,740/- as total compensation. However, by order dated 14.01.2015 in I.A. No. 64/2014 in the O.P.(MV), the compensation claimed under various heads was permitted to be amended and the total compensation claimed has been amended as Rs. 32,83,740/-. The total compensation awarded by the Tribunal is Rs. 28,71,184/-. Therefore, the preliminary objection of the Insurer is not sustainable.

11. According to the learned senior counsel for the Insurer, the Tribunal went wrong in awarding Rs. 26,48,184/- towards compensation for loss of dependency. The learned senior counsel contends that, the deceased had only less than 3 years of service left and the Tribunal ought not to have allowed 15% increase for future prospects and ought to have applied split multiplier method in the ratio 2:9.

12. Smt. Renju, the learned counsel appearing for the cross-objectors, submitted that the contention of the appellant regarding split multiplier shall not be entertained by this Court as the appellant had not raised such a contention in the written statement and the said contention is urged for the first time in appeal and the claimants had no opportunity to object to the said contention before the Tribunal. Smt. Renju relied on the judgments of this Court in Oriental Insurance Company Ltd. v. Geethamani and others [judgment dated 17.03.2021 in

M.A.C.A. No.722 of 2013] and National Insurance Company Ltd. v. Anitha and others [judgment dated 24.03.2021 in M.A.C.A. No.3748 of 2016] in support of her contention. Smt. Renju also relied on the decision in Jayasree N. and others v. Cholamandalam MS General Insurance Company Ltd [2021 (6) KHC 163] to contend that split multiplier cannot be applied in this case. In Jayasree (supra), the Hon'ble Supreme Court, after a survey of various decisions, considered the applicability of split multiplier and held as under:

"22. (II) Whether the High Court was justified in applying a split multiplier?

The deceased was aged 52 years at the time of the accident. He was working as an Assistant Professor and getting a monthly salary of Rs.83,831/-(Rupees eighty-three thousand eight hundred thirty-one only). The evidence on record shows that he was a meritorious man having the qualifications of M.Sc, M.Phil. He was a first-class holder in M.Sc. He was a Selection Grade Lecturer in Mathematics and was a subject expert. He was also included in the panel of Mahatma Gandhi University and was appointed as Examiner in the Board of Examiners for CBCCSS Programme in Mathematics. Subsequently, he was appointed as Deputy Chairman of the Examiners Board. Evidence on record also shows that there is acute shortage of lecturers in Mathematics for appointment in colleges and retired Mathematics Professors are appointed in so many colleges. It is common knowledge that the teachers, especially Mathematics teachers, are employed even after their retirement in coaching centers. They may also hold private tuition classes. This would increase their income manifold after retirement.

23. In Sarla Verma (2009 KHC 4634 : (2009) 6 SCC 121 : AIR 2009 SC 3104 : (2009) 2 SCC (Cri) 1002 : 2009 (78) AIC 153 : 2009 (162) DLT 278 : 2010 (2) KLT 802 : 2009 (6) SCALE 129 : 2010 (1) Guj LR 17 : 2009 (4) MPLJ 96 : 2009 (5) Mah LJ 775), this Court has held that while calculating the compensation, the Courts should take into consideration not only the actual income at the time of the death but should also make additions by taking note of future prospects. It was further held that though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid disparate yardsticks being applied or disparate methods of calculation being adopted.

24. In Reshma Kumari and Others v. Madan Mohan and Another (2013 KHC 4253 : (2013) 9 SCC 65 : 2013 (2) KHC SN 12 : 2013 (5) SCALE 160 : 2013 (2) KLT 304 : 2013 (126) AIC 178 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826 : 2013 (3) Cal LJ 1 : 2013 (99) ALR 1 : 2013 ACJ 1253), a three-Judge Bench of this Court has approved the judgment in Sarla Verma.

25. In Pranay Sethi (2017 (5) KHC 350 : (2017) 16 SCC 680 : 2017 (4) KLT 662 : ILR 2017 (4) Ker. 513 : 2017 (4) KLJ 627 : AIR 2017 SC 5157 : 2017 ACJ 2700), this Court has not only approved the aforesaid observations made in Sarla Verma but also held as under:

"59.3. While determining the income, an addition of 50% of actual salary to the

income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

26. In *K. R. Madhusudhan and Others v. Administrative Officer and Another* (2011 KHC 4140 : (2011) 4 SCC 689 : 2011 (1) KLT SN 136 : AIR 2011 SC 979 : (2011) 2 SCC (Cri) 706 : (2011) 2 SCC (Civ) 422 : 2011 (112) Cut LT 345 : 2011 (99) AIC 6 : 2011 (3) MPLJ 486 : 2011 (4) Mah LJ 520 : 2011 (85) ALR 476 : 2011 ACJ 743), this Court was considering a case where the High Court had applied split multiplier for the purpose of calculation of compensation towards loss of dependency and held as under:

"8. In *Sarla Verma*, (2009) 6 SCC 121 judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances.

9. We are of the opinion that the rule of thumb evolved in *Sarla Verma*, (2009) 6 SCC 121 is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different Courts, and to overcome the same."

27. In *Puttamma and Others v. K. L. Narayana Reddy and Another* (2013 KHC 4997 : (2013) 15 SCC 45 : 2014 (1) KHC SN 6 : 2013 (15) SCALE 437 : 2014 (1) KLT 738 : AIR 2014 SC 706 : 2014 (1) KLJ 777 : 2014 ACJ 526), this Court was again considering a case where split multiplier for the purpose of calculation of dependency compensation was applied. It was held thus:

"32. For determination of compensation in motor accident claims under S.166 this Court always followed multiplier method. As there were inconsistencies in the selection of a multiplier, this Court in *Sarla Verma*, (2009) 6 SCC 121 prepared a table for the selection of a multiplier based on the age group of the deceased / victim. The 1988 Act, does not envisage application of a split multiplier.

33. In *K. R. Madhusudhan v. Administrative Officer*, (2011) 4 SCC 689 this Court

held as follows: (SCC p. 692, paras 14-15)

"14. In the appeal which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.

15. We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method."

34. We, therefore, hold that in absence of any specific reason and evidence on record the tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in *Sarla Verma*, (2009) 6 SCC 121 as affirmed in *Reshma Kumari*, (2013) 9 SCC 65."

28. From the above discussion it is clear that at the time of calculation of the income, the Court has to consider the actual income of the deceased and addition should be made to take into account future prospects. Further, while the evidence in a given case may indicate a different percentage of increase, standardization of the addition for future prospects should be made to avoid different yardsticks being applied or different methods of calculation being adopted. In *Pranay Sethi* (2017 (5) KHC 350 : (2017) 16 SCC 680 : 2017 (4) KLT 662 : ILR 2017 (4) Ker. 513 : 2017 (4) KLJ 627 : AIR 2017 SC 5157 : 2017 ACJ 2700), the Constitution Bench has directed addition of 15% of the salary in case the deceased was between the age of 50 to 60 years as a thumb rule, where a deceased had a permanent job. In view of the above, the High Court was not justified in applying split multiplier in the instant case."

13. In *Pranay Sethi* (supra), the Constitution Bench took judicial notice of the fact that salary does not remain the same; and when a person is in a permanent job, to lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. Following *Pranay Sethi*, in *Jayasree* (supra), the Hon'ble Supreme Court awarded an addition of 15% of the salary of the deceased who was aged 52 years towards future prospects.

14. On going through the written statement filed by the insurance company, I find that the appellant had not raised the contention regarding split multiplier before the Tribunal. The said plea is for the first time urged before this Court in appeal.

15. The deceased was employed as Attender Grade II in the High Court of Kerala. Ext. A13 salary particulars of the deceased issued by the Assistant Registrar, High Court of Kerala shows that the monthly salary of the deceased at the time of accident was Rs. 26,168/-. Since he was earning less than the basic exemption limit, no tax was deducted from his salary. The age determined for compulsory retirement of the High Court staff is 56 years. The deceased was aged 53 years at the time of accident. The cross-objectors have filed I.A. No.1076/2015 in this appeal producing a certificate issued by the Joint Registrar (DDO), High Court of Kerala certifying that, the revised pay and allowances (consequent to the tenth pay revision) the deceased would have drawn as on 30.04.2015, ie; on the date of retirement, had he been in the High Court service is Rs. 45,565/-. I refer to this certificate only to reiterate the observation of the Constitution Bench of the Hon'ble Supreme Court in Pranay Sethi (supra) which reads as follows:

"60...Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter."

Therefore, I find that this is a case where the split multiplier cannot be applied. The Tribunal was right in applying the multiplier of '11'. The claimants are entitled to get an addition of 15% of the salary towards future prospects.

16. The appellant contends that the amounts awarded under various heads are excessive and the Cross Objectors contend that the amounts are inadequate. Therefore, this Court has to examine whether the petitioners were awarded just and reasonable compensation.

17. As per Ext. A13, the monthly salary of the deceased at the time of accident was Rs. 26,168/-. The monthly income of the deceased with 15% addition towards future prospects would come to Rs. 30,093/- (26,168+3,925). The deceased had three dependents. After deducting one-third of the income towards personal expenses, the income to be taken for assessment of loss of dependency is Rs. 20,062/- (Rs.30,093 - Rs.10,031). The multiplier is '11'. So, the compensation for loss of dependency comes to Rs. 26,48,184/- (20,062×12×11). Therefore, this Court finds that the Tribunal has rightly assessed the compensation for loss of dependency as Rs.26,48,184/-.

18. Towards funeral expenses, the Tribunal has awarded Rs.10,000/-, whereas, in the light of the decision in Pranay Sethi (supra) followed in Jayasree (supra), the petitioners are entitled to get an amount of Rs.15,000/- plus 10% enhancement in every three years (Rs.16,500/-). Thus, after deducting the amount of Rs. 10,000/- already paid, the petitioners are entitled for an enhanced compensation of Rs.6,500/- (16,500-10,000) towards funeral expenses.

19. Towards loss of estate, the Tribunal has awarded Rs.25,000/-, whereas, the petitioners are entitled to Rs.16,500/- under the said head in the light of the decision in Pranay Sethi (supra) followed in Jayasree (supra). Therefore, an amount of Rs.8,500/- has to be deducted under the head loss of estate.

20. The Tribunal has awarded Rs.1,00,000/- as compensation towards loss of consortium. The Hon'ble Supreme Court, in United India Insurance Co.Ltd. v Satinder Kaur [AIR 2020 SC 3076], after considering Pranay Sethi (supra), has awarded spousal consortium at the rate of Rs.40,000/- with 10% increase in every three years and parental consortium to each child at the rate of Rs.40,000/- with 10% increase in every three years. Therefore, the petitioners are entitled to Rs. 1,32,000/-(44,000×3) towards consortium. After deducting the amount of Rs.1,00,000/- already awarded, the petitioners are entitled to an enhanced compensation of Rs.32,000/- towards loss of consortium. The Hon'ble Supreme Court has held in Satinder Kaur (supra) that, when compensation is awarded under the head loss of consortium, there is no justification in awarding compensation for loss of love and affection as a separate head. Therefore, since Rs. 1,32,000/- is awarded under the head loss of consortium, the petitioners are not entitled for any amount under the head loss of love and affection. Therefore, the amount of Rs.75,000/- awarded under the head loss of love and affection has to be deducted from the total compensation.

21. The Tribunal has awarded an amount of Rs.10,000/- towards pain and sufferings. The petitioners are not entitled for any amount under the said head in the light of the decision in Satinder Kaur (supra). So the amount of Rs.10,000/- awarded under the said head is to be deducted from the total compensation arrived at.

22. Thus, on a re-appreciation of the pleadings and materials on record and the law laid down in the aforecited decisions, I hold that the compensation awarded by the Tribunal in the impugned award is on the higher side and has to be modified and reduced as held above and given in the table below for easy reference.

Head

Amount Claimed

Amount Awarded by the Tribunal

Amount modified and recalculated by this Court

Compensation for loss of dependency

23,02,740/-

26,48,184/-

26,48,184/-

Funeral expenses

10,000/-

10,000/-

16,500/-

Transport to hospital

10,000/-

3,000/-

3000/-

Loss of estate

10,000/-

25,000/-

16,500/-

Loss of

consortium

4,00,000/-

1,00,000/-

1,32,000/-

Compensation for loss of love and affection

4,00,000/-

75,000/-

-

Compensation for pain and suffering

1,50,000/-

10,000/-

-

Total

32,83,740/-

28,71,184/-

28,16,184/-

23. I find that the interest awarded by the Tribunal on the amount of compensation awarded is just and reasonable in the facts and circumstances of

the case and there is no reason to interfere with the same.

24. In the result, the appeal is allowed as above holding that the petitioners are entitled only for an amount of Rs. 28,16,184/- instead of Rs.28,71,184/-awarded by the Tribunal, with 9% interest per annum from the date of petition till realisation and proportionate costs. The cross objection is dismissed.

As per order dated 07.12.2015 in the appeal, this Court had directed the appellant-insurer to deposit before the Tribunal 40% of the amount awarded by the Tribunal as condition for stay of execution of award and giving liberty to the claimants to withdraw the same on deposit. The appellant shall deposit the balance amount as modified by this Court with interest and proportionate costs before the Tribunal within a period of two months from the date of receipt of a certified copy of this judgment.